FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC RECORDS

FROM: COMMISSION SECRETARY

DATE: April 22, 2003

SUBJECT: COMMENT ON DRAFT AO 2003-03

Transmitted herewith is a timely submitted comment from Mr. Donald J. Simon on behalf of Common Cause and Democracy 21 regarding the above-captioned matter.

Proposed Advisory Opinion 2003-03 is on the agenda for Thursday, April 24, 2003.

Attachment:

2 pages

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April 22, 2003

By Facsimile

Mary Dove
Acting Secretary
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Comment on AOR 2003-3

Dear Ms. Dove:

I am writing on behalf of Common Cause and Democracy 21 to comment on the General Counsel's proposed draft of Advisory Opinion 2003-3.

This advisory opinion poses a number of questions regarding the application of 2 U.S.C. 441i(e)(1), a provision of the Bipartisan Campaign Reform Act (BCRA) governing the permissible solicitations that can be made by a Federal officeholder or his agents on behalf of non-Federal candidates. The AOR seeks guidance on behalf of a Federal officeholder who wishes to make solicitations for non-Federal candidates in the Commonwealth of Virginia, which permits contributions to state candidates from sources and in amounts not allowed by Federal law.

As you know, we strongly disagree with the definition of "to solicit" which was adopted by the Commission in its soft money rulemaking last summer, and which is accordingly now applied by the General Counsel in his draft opinion. Notwithstanding that overarching problem, we do agree with many of the specific interpretations set forth in the draft. In particular, we agree:

• that a Federal officeholder can solicit funds for a non-Federal candidate only from sources and in amounts permissible under Federal law.

• that a Federal officeholder cannot make a "general" solicitation of funds, but must expressly qualify any solicitation for a state candidate as limited by the Federal source prohibitions and contribution limits.

• that a Federal officeholder is not in violation of section 441i(e)(1) if, in response to a proper solicitation by the officeholder, the donor makes a contribution to the state candidate that does not comply with the Federal rules.

• that it constitutes a solicitation by a Federal officeholder to allow his name to be used in connection with an invitation for, or in publicity for, a state candidate fundraiser, including as part of "host committee," where the invitation or publicity asks for donations to the candidate. Given this, a Federal officeholder's name can be used only if the invitation or publicity is expressly limited to seeking federally permissible funds.

• that any person asked by a Federal officeholder to raise money for a state candidate is operating as an "agent" of the Federal officeholder and is under the provisions of section 441i(e)(1).

As noted above, we strongly disagree with the definition adopted by the Commission as part of the Title I rulemaking last summer that restricts the term "to solicit" to mean only "to ask." 11 C.F.R. 300.2(m).

That definition was adopted after the Commission rejected a definition proposed by the General Counsel that would have defined the term "solicit" to mean "to request or suggest or recommend." *See* 67 Fed.Reg. 35654, 35681 (May 20, 2002). The General Counsel's proposed definition of the term would have correctly implemented the language and intent of BCRA, while the definition adopted by the Commission is contrary to law, and is currently being challenged in court. *Shays v. FEC*, C.A. 02-1984 (CCK)(DDC). We support this challenge.

We appreciate the opportunity to submit these comments.

Sincerely,

Donald J. Simon

cc: Lawrence Norton, Esquire